VIRGINIA LAW REGISTER.

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WE are indebted to Gardner S. Boothe, Esq., of the Alexandria bar, for copies of the instructions in the Daingerfield will case, published elsewhere in this number.

ADVOCATES of uniformity of legislation in the several States may well despair when it is announced that the Negotiable Instruments Law, from which so much was expected toward furthering the uniformity so desirable in this branch of the law, has already been amended in Massachusetts by the restoration of grace to sight paper. We shall expect to find more diversity in the law merchant in the several States within the next ten years than existed before the enactment of this excellent statute. Before the law was put into statutory form, few legislators knew enough about it to undertake to tinker with it. Hereafter it will supply abundant material for those members of the legislature who are ambitious not to return to their constituents without getting at least one bill through.

We are in hearty sympathy with the movement for uniformity, but it is to be feared that it is a Utopian dream.

THE legislature of Alabama has provided by statute for the publication, in the next volume of the Alabama Supreme Court Reports, of the Code of Ethics promulgated by the Bar Association of that State. This brings the Code of Ethics to the attention of lawyers who are not members of the Association, and who, presumptively, need education along ethical lines. While no merely written code ever made an honest lawyer of a dishonest one, it nevertheless serves a good purpose in holding up a high professional standard for the guidance of those of the profession, who from youth, inexperience, ignorance, poverty, or overweening ambition to get business and to win cases, fall into evil ways. Comparatively few lawyers wilfully

transgress the ethical code, and ignorance is as prolific a source of professional dereliction, as it is of transgressions of the criminal code.

The idea of the Alabama legislature is a good one, and worthy of imitation.

THE eleventh annual meeting of the Virginia State Bar Association will be held at the Hot Springs of Virginia, on August 1, 2 and 3. Mr. Guy and his committee have provided a most attractive program for the occasion.

The address of the President, Hon. John Goode, will be delivered Tuesday morning, August 1. His subject will be "*A Recurrence to Fundamental Principles.*" On Tuesday night, James P. Harrison, of Danville, will read a paper on "*Suggested Changes in Our Judicial System.*" On Wednesday, papers will be read by Hon. Marshall McCormick, of Berryville, and R. Tate Irvine, of Big Stone Gap, on "*Professional Ethics*" and "*The Lawyer of the Future.*" The annual address will be delivered by Alexander Pope Humphrey, of Louisville, Ky. His subject will be "*The Impeachment of Samuel Chase.*" The annual banquet on Thursday evening will be the last but not the least attractive number on the program. It is to be hoped that the Association will, at this meeting, maintain its reputation as the best attended Association in the country.

Mr. E. C. Massie, the efficient secretary, has sent out circulars to each member of the Association, containing all needed information, including hotel and railroad rates.

We take the liberty of recalling to those members of the bar who are not members of the Association, the appeal made to them through these columns some months ago, to become such. Especially do we urge the younger lawyers, many of whom have but recently been admitted, not to delay making application for membership. Each member of the Association is provided with a blank form of application, and will cheerfully instruct applicants as to the procedure by which membership may be acquired. We append a copy of the article of the constitution relating to membership:

Who May be Members.—Any member of the bar, in good standing, residing and practising in the State of Virginia, who shall have been at the bar of this State at least one year, and any teacher in a regularly organized law school, may become a member by a vote of the committee on admissions, as may be provided in the by-laws, and upon subscribing to this constitution, or otherwise signifying in writing his acceptance of membership, and paying the admission fee.

WE publish in this number a thoughtful paper by Ben B. Lindsey, Esq., of the Colorado bar, on the Unanimity of Jury Verdicts, and commend its careful perusal to every member of the Virginia bar.

The paper is a strong plea for the abolition of the singular, not to say barbarous, rule, requiring the unanimous voice of the jury to reach a verdict in civil cases. The requirement is of comparatively modern origin, and is by no means contemporaneous with the inception of jury trial. It worked no great hardship in former times, when the jury were coerced by starvation and other privations into reaching the required unanimity. With the abandonment of this saving feature, and with the largely increased restraints upon the trial judges in commenting upon the testimony, the inevitable result has followed that in a hotly contested litigation a hung jury is the rule rather than the exception.

It is a remarkable testimonial to our conservative habits of mind, that amongst a people whose government is founded upon the principle that differences of opinion will exist, and must be settled by the minority giving way to the majority, and that the majority shall rule—whose jurisprudence is saturated with the idea that it is more to the public interest that there be an end of litigation than that justice be done in individual cases—should have rested so long content with a practice subversive of these fundamental principles.

A bare majority of our legislature make the laws by which our personal and property rights are defined and protected, and a majority of the judges declare and enforce these laws. A large, probably the larger, mass of litigation between man and man, involving the most delicate and valuable interests, both of person and property, is disposed of in the chancery and admiralty courts, without the intervention of a jury—and, in these courts, the decision of the majority governs.

The ease and frequency with which one or two weak or crotchety men in the jury box are induced to dissent from the majority, and thus cause a mistrial, even in a fairly clear case, is known to every trial lawyer. In the requirement of unanimity, bribery (happily rare in Virginia), obstinacy, stupidity, personal predilection for or prejudice against counsel or litigant, and all the weaknesses of human nature, are given full sway, and, though exerted upon but one of the twelve, are sufficient to tie the hands of the court and to stay its judgment. The evil done is not only in the increased cost to the parties of new trials, and the denial of a judgment to him who shows himself best

entitled to it, but in the injury to the public in the loss of confidence in the tribunals set up by law for the determination of civil controversies.

As shown in Mr. Lindsey's paper, a number of the States have abolished the requirement for unanimity, and the result has proved most satisfactory to the bar and to the people.

We learn from the paper also, that the requirement for unanimity of the jury in civil cases has received the condemnation of some of the most eminent jurists for a century past. Mr. Christian in his edition of Blackstone's Commentaries characterizes it as "repugnant to all rules of human conduct, passions and understanding." Jeremy Bentham and Lord Brougham united in a report to Parliament in 1830, in which it was declared that "it is difficult to defend the justice or wisdom of the principle of unanimity. It seems absurd that the rights of a party in questions of a doubtful and complicated nature should depend on his being able to satisfy twelve persons that one particular state of facts is the true one. This necessity most frequently leads to improper compromises among jurors of their respective opinions. The interests of justice manifestly require a change of law on this subject."

The late Mr. Justice Miller, of the United States Supreme Court, advocated its abolition, and the adoption of a rule permitting nine out of the twelve jurors to find a verdict, a rule of which he said it was "an approach to perfect justice, as near perhaps as the fallibility of human nature permits," and that "the change would remove the most serious objection to trial by jury, a requirement (unanimity) that stands out almost without support in reason or experience." The late Judge Cooley was equally as earnest in his condemnation of the present rule, and expressed the opinion that "it could hardly in any age have been intoduced into practice by the deliberate act of a legislature." Lord C. J. Cockburn likewise condemned the "unscrupulous" requirement.

Entertaining, as we do, less of reverence for jury trials in civil cases than the orthodox Anglo-Saxon probably should, we are yet unprepared to advocate its abolition. We should, however, rejoice to see a constitutional amendment in Virginia authorizing a verdict by less than the whole number of jurors in civil cases. Whether the number should be larger than a bare majority is a matter of detail of no great moment. A verdict by a mere majority would be more logical, but in view of the character of the average jury, a requirement of two-thirds or three-fourths would be more desirable.

Since such a rule would make verdicts against corporations easier to obtain, should the question become a live one in Virginia, we may look for the opposition of all corporate interests to the measure, and with such opposition the chances of its adoption are more or less remote. The subject is one, however, well worthy of agitation, and we sincerely hope the State Bar Association will give it some attention.